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IN THE

Supreme Court of the United States

TERM, 1964.

No. 1018

STATE OF NEW JERSEY,
Petitioner,

vs.

WAYNE GODFREY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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WAYNE GODFREY,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on July 17, 1963.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court is unreported and is printed in Joint-Appendix, Volume I, hereto, *infra*, p. 40a. The opinion of the Circuit Court of Appeals is unreported and is printed in Joint-Appendix.

JURISDICTION:

The judgment of the Circuit Court of Appeals was entered on July 17, 1963 (Joint-Appendix). Rehearing was denied on January 24, 1964. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

Whether the Court of Appeals, in concluding that defendant's confession was involuntary, erroneously considered psychiatric reports concerning defendant and other matters *dehors* the record.

Whether the Court of Appeals gave undue weight to the testimony of defendant and came to conclusions unjustified in the inadequate record before it.

STATEMENT.

The defendant, Wayne Godfrey, was indicted by the Camden County Grand Jury, along with two co-defendants, for murder committed during an attempted robbery. The State proceeded on a felony-murder theory. The jury found the defendants guilty of murder in the first degree, without a recommendation of life imprisonment. This conviction, in the Camden County Court, was affirmed by the New Jersey Supreme Court. *State v. Johnson*, 31 N. J. 489, 158 A. 2d 11 (1960).

Thereafter, on a motion for a new trial, the trial court heard evidence on a claim that the confessions used at the trial had been coerced and filed an opinion denying the motion. *State v. Johnson*, 63 N. J. Super. 1c, 163 A. 2d 593 (1960). This judgment was affirmed, *State v. Johnson*, 34 N. J. 212, 168 A. 2d 1, *cert. den.* 368 U. S. 933 (1961).

Subsequently, a federal petition for writ of habeas corpus, alleging *inter alia*, that the confession used at the trial had been coerced, was denied (Joint-Appendix, Vol. I, page 40a).

On appeal, the United States Court of Appeals for the Third Circuit reversed and remanded to the District Court, with instructions to grant the writ of habeas corpus without prejudice, to the right of the State to try defendant again.

REASONS FOR GRANTING THE WRIT.

I. The Court of Appeals, in concluding defendant's confession was involuntary, considered psychiatric examinations of defendant and other matters dehors the record.

Of especial significance to the Court of Appeals were Godfrey's psychic inadequacies which apparently manifested themselves in the form of narcotics. The Court of Appeals finds as a fact that "on the Motion for a New Trial, it was established that Godfrey had been examined by a psychiatrist employed by the State of New Jersey," and then states the contents of the psychiatrist's report and makes findings of important facts based thereon. In this the court erred. The only place we find that Godfrey was examined by a psychiatrist is in the affidavit of a Mr. Steven Sieverts filed as part of the Motion for New Trial in the State proceeding. This fact was not proven at the hearing on the Motion. The court further erred in assuming that the psychiatrist's examination there referred to, is the same as those reports attached to, and forming part of, the Petition for Habeas Corpus (35a to 37a). This is not so. The psychiatrist's report of the examination last mentioned, and upon which the Court of Appeals relied, was made on July 5, 1959, while the defendant was in the death house following his conviction. Again, the court relies upon, and quotes from, the psychiatric report of his examination of defendant. This report was made on March 30, 1960, after the defendant had been in the death house for fourteen months, after conviction and after his appeals to the State Supreme Court and the United States Supreme Court had been rejected. These reports were never proven in court. By this we mean that the experts were not pro-

duced for examination and the State was denied cross-examination. The State objected to the use of these reports merely by attaching them to a Petition and then using their contents without proving them in the usual fashion. If the proper procedure had been followed, it could be established what, if any, weight should be accorded to them. We then could have found out what psychological transitions occur to a defendant in the death house for such a period of time, particularly after his hopes for victory by appeal appear lost.

Defendant's mental state, indicated in these psychological and psychiatric evaluations, was never related to a period surrounding defendant's interrogation—the period with which we are concerned. In this posture of the proofs, it was error for the court to rely on cases such as *Fikes v. Alabama*, 352 U. S. 191 (1957); *Watts v. Indiana*, 338 U. S. 49 (1949) and *Turner v. Pennsylvania*, 338 U. S. 62 (1949). Nor are we dealing with a youthful offender, which would make *Haley v. Ohio*, 332 U. S. 596 (1948), apposite.

While all relevant circumstances must be considered in determining the admissibility of the confession, the ultimate question is whether the defendant's will was overborne and his capacity for self-determination seriously impaired. *Culombe v. Conn*, 367 U. S. 568 (1961). This test governs regardless of the method of coercion, be it physical violence or psychological pressure and is equally applicable to a drug-induced statement. *Townsend v. Sain*, 372 U. S. 293 (1963). It is well established that a confession of crime which is proved to have been made by one under the influence of drugs or narcotics is not *ipso facto* inadmissible in evidence. See Annotation, "Use or administration of drugs or narcotics as affecting admissibility of confession," 69 A. L. R. 2d 384 (1960). It is manifest that any holding of the inadmissibility of a confession because of drug or narcotic influence acting upon the person by

whom the confession was made, requires, as a logical foundation, proof that at the time he confessed the defendant was actually so influenced. We believe it was error for the Court of Appeals to characterize in its Opinion as "undisputed," Godfrey's testimony of his use of narcotics when this story was first told in May, 1960, over sixteen months after the trial, and over two years and four months after the alleged incidents, and which, by Godfrey's own admission, was never told to his trial attorney.

How does one dispute, on May 24, 1960, the allegations of Wayne Godfrey concerning drugs, when this is the first time it had been mentioned when the use of drugs allegedly took place on January 24 and 28, 1958? Nowhere is it shown that defendant was not in full command of his senses at the time of his confession.

On the record before the Court of Appeals, there was no justification, legally, psychiatrically or psychologically, to equate the personality of Godfrey, a year and a half after conviction, with the man who was arrested and interrogated on January 28 and 29, 1958.

II. Whether the Court of Appeals gave undue weight to the testimony of defendant and came to conclusions unjustified in the inadequate record before it.

A careful review of Godfrey's testimony (294a-336a) indicates that his complaint related to the confession given Chief Dube. Even at the hearing on the Motion for New Trial, based on newly-discovered evidence in May of 1960, counsel then representing Godfrey did not consider it meritorious to contend that what transpired at police headquarters prior to defendant's confession, resulted in a coerced confession. The high caliber of defendant's counsel cannot be disputed, for it was he who subsequent to the

State's denial of inspection of his client's confession, appealed to the Supreme Court of New Jersey, changing the law of this State by permitting pre-trial examination by defendant of his confession.

Unfortunately, the lower court misconstrued Godfrey's testimony which, on analysis, makes no real criticism as to what happened at the time now complained of. On May 24, 1960, Godfrey testified that his statement to Chief Dube was true, except for the robbery (295a). Godfrey denied speaking to Noah Hamilton, yet Noah Hamilton testified as to the conversation at the main trial (not reported in the record before this court), and Godfrey told the psychiatrist, on February 3, 1958, of his conversation with Hamilton.

Godfrey begins the attack of his confession on page 307a through 310a. Here his only complaint concerns the statements to Chief Dube. This complaint is patently false. He denied being under oath and suggests that a certified court stenographer would participate in faking a record in order to convict Godfrey. Mr. Albert took down everything that was said and read the questions and answers back to Godfrey alone. No one questioned Mr. Albert, for all trial and defense counsel knew and respected him. Godfrey's direct examination ended and only after vigorous cross-examination did he next complain, at 319a, of no rest and being bruised and hitten (sic).

The next evidence of Godfrey's condition is at 323a. Again, in cross-examination by the Prosecutor, in answer to the question as to the length of time the confession took, he answered, "I don't know how long it took, I know it was tiresome to me and I had no rest or nothing, no sleep or nothing." These are the only complaints of Godfrey concerning the interrogation. The balance of his testimony, both on direct and cross, is a repudiation of the questions and answers in his confession. Godfrey doesn't complain about a persistent, all-night interrogation. Godfrey does

not tell how long he was questioned and when he was questioned.

The Court of Appeals has unjustifiably taken the testimony of the State's witnesses at the original trial and turned intermittent questioning into persistent grilling—without any basis or justification in the record. The Court of Appeals further says the police officers who obtained his informal confession, were present as silent spectators while Chief Dube took his formal confession. This is not substantiated in the record.

The Court of Appeals makes a further finding of fact which is based upon an assumption that the defendant confessed to a story of "armed robbery" because he "understood that the ordeal of the last 21 hours would not be ended until he should repeat in a formal way what he had told the interrogating police officers. Thus, the final questioning by Chief Dube was a culmination of pressure rather than a release from pressure." This assumption by the Court is not supported by the record before it or in any other record. Godfrey never so testified nor so contended. There is no basis in fact to the statement that what he confessed to Chief Dube he had previously told the police officers. As a matter of fact, if given the opportunity the State will show that what he previously told the police officers was totally different.

The Court of Appeals has overly emphasized the preliminary statement by Chief Dube when he said, "I want to ask you what you know about that hold-up." The court has ignored that in the same breath Chief Dube had told him that in the course of the hold-up a man by the name of Edward Davis was shot and as a result of that shooting he died a short time later.

The Court of Appeals further ignored the fact that almost at the outset of the confession the defendant for the first time said:

". . . I parked the car and they went around to the place and they came back, so I asked them what was the matter—I said, 'Come on, let's go,' and they said, 'No, we are going back and get the place,' so they both went back . . .".

Not to be overlooked, is the important item that at the hearing Godfrey testified that Cassidy and Johnson went there to collect a debt (298a, 299a, 301a), and then completely lied by stating that when he parked the car, Cassidy and Johnson left and Cassidy came back alone and told him that Johnson had shot a man (301a-302a). In this version he was willing to overlook the important fact that Cassidy and Johnson had previously returned to the car and then went back to the Davis store to "get the place." Without any showing, and we say there is no such showing, and to the contrary charge that the defendant never previously so stated to the police officers, we respectfully submit that the court was not justified in finding that the defendant's confession was involuntary.

The Court of Appeals erred in concluding from the fact that during the 21 hours of detention defendant was not taken before a magistrate or allowed access to counsel, his confession was involuntary. The fact that the defendant was over-detained before arraignment in a State proceeding does not invalidate the confession obtained in the interim, *Lisenba v. California*, 314 U. S. 219 (1941); *Culombe v. Conn.*, 367 U. S. 568 (1961). The United States Supreme Court has failed to extend the exclusionary rule of *McNabb v. U. S.*, 318 U. S. 332 (1943), to state criminal cases. New Jersey has repeatedly declined to follow *McNabb*. *State v. LaPierre*, 39 N. J. 156, 188 A. 2d 10 (1963); *State v. Smith*, 32 N. J. 501, 161 A. 2d 543 (1960), *cert. den.* 364 U. S. 936 (1961); *State v. Wise*, 19 N. J. 59, 84, 115 A. 2d 62 (1955); *State v. Pierce*, 4 N. J. 252, 263, 72 A. 2d 305

(1956). New Jersey finds nothing which suggests the federal doctrine of exclusion for delay in arraignment is of constitutional stature and applicable to the states. It merely remains an exercise of the supervisory authority of the United States Supreme Court over the administration of justice in the federal courts. *State v. LaPierre*, supra. The fact that the defendant has been denied consultation with an attorney has been held by the United States Supreme Court not in itself to be controlling on whether the confession was voluntary. *Cicenia v. Lagay*, 357 U. S. 504 (1958); *Crooker v. California*, 357 U. S. 433 (1958).

If law enforcement officers are to have fair opportunity to interrogate witnesses and suspects as is conceded by the majority in *Haynes v. Washington*, 373 U. S. 503 (1963), then when and for how long shall it continue. We are not suggesting that this can be measured by a time clock. We would rest on the test laid down by the United States Supreme Court namely, "the will of the accused is so overborne at the time of confession that his statement is not the product of a rational intellect and a free will." *Reck v. Pote*, 367 U. S. 433, 440 (1961); *Culombe v. Conn.*, supra. To make this test meaningful, it must be applied realistically and not in a vacuum. Before a confession should be invalidated there ought to be a substantial showing in a timely proceeding. Where the original trial court had the opportunity of hearing a complaint 16 months after the original trial and rejected the witnesses as unbelievable it should not be dismissed lightly. *Brady v. Maryland*, —— U. S. ——, 10 L. Ed. 215.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted. In the alternative this cause should be referred to the District Court for further hearing and taking of testimony. *Townsend v. Sain*, supra.

Respectfully submitted,

NORMAN HEINE,
Counsel for Petitioner.